

*In The United States District Court  
For the District of Delaware*

James Hall,

Plaintiff

v.

David Holman, Security Superintendent  
Deputy Warden Lawrence McQueen and  
Acting Deputy Warden 1 Clyde D. Sagers

Defendants.

C.A. No 04-1328-GMS



Plaintiff's Reply To State Defendants Opposition to  
Plaintiff's Motion for Appointment of Counsel

Come Now, Plaintiff, James Hall, pro se, And moves  
this Honorable Court to grant the plaintiff's request for counsel  
in support of his motion. The plaintiff states as follows:

1. The Plaintiff, James Hall, who is considered a friend of this Court  
is a prisoner incarcerated with the Delaware Department of Correction  
located near Smyrna Delaware. And has filed this motion pursuant  
to 42 U.S.C. § 1983. in his prose complaint he alleges the Supervisory  
officers at the (DOR) failed to provide him with reasonable protection from  
Assault by his cellmate in violation of his Constitutional Rights under the  
Eighth Amendment

## Memorandum of Law

Plaintiff has no constitutional or statutory right to appointment of counsel in a civil lawsuit. *Ray v. Robinson*, 640 F.2d 474, 477 (3d Cir. 1980) (citing *Peterson v. Nader*, 452 F.2d 754, 757 (8th Cir. 1971)). However, the court has the authority to appoint counsel under 28 U.S.C. § 1915 (d) *Ray* supra at 477. Appointments should be made only when it is necessary to avoid fundamental unfairness. *Maddin v. Freake*, 650 F.2d 885, 886 (7th Cir. 1981).

- 2) The need to appoint counsel in this case is applicable and Plaintiff incorporates by reference his claims as asserted in his Motion to Appoint Counsel, Affidavit, Memorandum, (D.I. 16)

## Standard of Review

In *Tabron* and, again in *parham*, the third circuit court of appeals articulated the standard for evaluating a motion for the appointment of counsel filed by a pro se plaintiff. Initially, the court must examine the merits of a plaintiff's claim to determine whether it has some arguable merit in fact and law. See *parham*, 126 F.3d at 457 (citing *Tabron*, 6 F.3d at 157); Accord *Maddin v. Freake*, 650 F.2d 885, 887 (7th Cir. 1981) (per curiam) (citing with approval in *parham* and *Tabron*). Only if the court is satisfied that the claim is factually and legally meritorious should it then examine the following factors

(1) The plaintiff's ability to present his own case; (2) The complexity of the legal issues; (3) The extensiveness of the factual investigation necessary to effectively litigate the case and the plaintiff's ability to pursue such an investigation; (4) The degree to which the case may turn on credibility issues; (5) whether the testimony of expert witnesses will be necessary; and (6) whether the plaintiff can retain and afford counsel on his own behalf. See *Parham*, 106 F.3d at 457-58 (citing *Tabron*, 6 F.3d at 155-56 n.5). This list, of course, is illustrative and, by no means, exhaustive. See *id.* at 458.

### Argument

At 10, of Defendant's opposition to plaintiff's motion for appointment of counsel they admit that the case will turn on credibility determinations and will be a contest between the plaintiff and Defendant's. And that this factor, however, alone does not determine if counsel should be appointed. The controlling factor they admit is, along with *Idris*'s 1, 2, 3, 4, 5, 6, of the controlling factors in *Parham* and *Tabron*, weigh in favor of appointing counsel in this case for plaintiff.

As a initial matter the plaintiff made a request to proceed in forma pauperis on 10-5-04. He was directed to pay a partial filing fee on 8-18-2005. Therefore, it would appear that plaintiff is unable to afford legal representation. Cf. *Tabron*, 6 F.3d at 157 n.5 ("if counsel is easily attainable and affordable to the litigant, but the plaintiff simply has made no effort to retain an attorney, then counsel should not be appointed by the court.") (citing *Cooper v. N. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989)). The Record in this case suggests that plaintiff has made repeated attempts to retain an attorney at his attached debt. His motion to appoint counsel. Supporting his position is needing this Honorable Court to

Respectfully Plaintiff is flattered by Defendants Confidence in his Ability's (legally), however, their self-serving EXaggeration Are Transparent once Viewed in Relation to The Early Stages of this Litigation and the pertinent facts Plaintiff offers the following:

Defendants Argue at Item 7 of their Opposition, Plaintiff was Successfully Negotiated the Litigation Road to this point through his own efforts., Plaintiff asserts: Initial stages which don't require any legal argument. Moreover, Defendants haven't even filed their answer and or motion to dismiss. Defendants Contentions is misplaced and or premature. Also, the fact that Plaintiff had to "twice" Amend his Complaint, which betes Defendants Contentions, however, demonstrates plaintiffs Lack of legal experience... Again is incredible about the Litigation hasn't even moved past the complaint stage.

Defendant Argue at 8 Plaintiff has filed his case in a relatively clear manner and displays a firm grasp of the legal precepts. Defendant can't have you cater and eat it too, The merits have not been argued or supported by legal memorandum complexity claims also beted by fact that Plaintiff had to Again twice Amend his Complaint... by GRACES of the Court. Defendants Contentions Are misplaced and or premature. Plaintiff pray that the Honorable Court grant his motion thus dismissing Defendants Opposition, or Dismiss Defendants Opposition. His premature w/out Precedice, or Appoint Counsel for the limited purpose of Assisting w/Discovery

Finally on November 2, 2005 Defendants opposed plaintiff's properly filed and Relevant and Legitimate Discovery Request they erroneously believe that they can force plaintiff to prove his case at the "complaint stage" without the Aid of Discovery, which is in conflict with the controlling factor 3<sup>rd</sup> (3) in *Pattana and Tabron*, "The extensiveness of the factual investigation necessary to effectively litigate the case and the plaintiff's ability to pursue such an investigation, merit appointment of counsel."

### Conclusion

Plaintiff is not a graduate of law school like those who oppose his Motion for appointment of counsel and pray this Honorable Court grant his motion for appointment of counsel wherefore plaintiff respectfully pray the court grant his motion for appointment of counsel to avoid fundamental unfairness

Plaintiff seeks, *pro se* pleading (mirrored under  
*James v. Kerner* 404 U.S. 514 (1972))

James Hall  
 James Hall 167581, *pro se*  
 1181 Rocklock Rd Smyrna Del

11-18-05

Date:



CERTIFICATE OF SERVICE

I, James Hall, hereby certify that I have served a true and correct copy(ies) of the attached: 2 Reply  
To Defendant's Opposition to plaintiff's Appointment of Counsel upon the following parties/person(s):

TO: Mrs. Lisa Barchi  
820 N. French Street,  
6<sup>th</sup> Floor Wilmington DE  
19801

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977,

On this 18 day of November, 2005.

James Hall

IM James H. McC. Reese  
SBI# 162581 UNIT U-6-9  
DELAWARE CORRECTIONAL CENTER  
1181 PADDOCK ROAD  
SMYRNA, DELAWARE 19977

Loop Mail

Office of the Clerk U.S.D.C.  
844 N. King Street, Cocke Box 18  
Wilmington Del. 19801-3570  
\_\_\_\_\_  
\_\_\_\_\_

U.S.M.  
X-RAY

